HIGH COURT OF UTTARANCHAL AT NAINITAL.

Special Appeal No. 19 of 2004

M/s A.P.R. Wools Private Limited
Rampur Mandi Road
Dehradun through its
Promoter / Director Rakesh Kumar …**Appellant.**

Vs.

Industrial Investment Bank of India Ltd.
And others. ..**Respondents.**

Sri Pankaj Migalani learned counsel for the appellant.
Sri Mehmina Panvani learned Senior counsel assisted by
Ms. Menka Tripathi counsel for the respondent 3 (PICUP).
Sri B.D. Pandey holding, brief of Sri Naresh Pant
learned counsel for the respondent No.4

Coram: Hon'ble M.M Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

Dated: Nainital September 30, 2004

P.C.:-

The present Special Appeal has been preferred against the order 29.06.2004 passed by this Court in Company Application No. 16/1996 (Old No.) /New No. 9 of 2001 Industrial Investment Bank of India Ltd. Vs. M/s A.P.C. Wools Pvt. Ltd. and others.

The Industrial Investment Bank of India Ltd. moved a company application before this Court u/s 40 of the Industrial Reconstruction Bank of India Act 1984 with the following prayers:-

a) The properties mentioned in the schedule A,B & C appearing hereinafter in this petition be sold :
b) Ad-interim order of injunction be passed restraining the respondents their agents and servants from removing or alienating or encumbering or transferring the properties and assets mentioned in Schedules A,B & C appearing hereinafter in this petition.
c) A Receiver be appointed over the properties and assets mentioned in the Schedules A.B & C appearing hereinafter in this petition.

d) A notice be issued to the respondents to show cause why:-
   i) An order for sale shall not be made in terms of prayer (a) hereinabove:
   ii) The order of injunction issued in terms of prayer (b) hereinabove shall not be made absolute:
   iii) The order of Receiver issued in terms of prayer (c) hereinabove shall not be made absolute;
e) After hearing the cause shown, if any, by the respondents;
   i) The properties mentioned in Schedules A.B & C appearing hereinafter in this petition be hold;
   ii) The order of injunction and receiver be made absolute:
f) The sale proceeds be applied for the discharge of the dues of the petitioner no.1 as mentioned in paragraph no. 12 and 13, hereinabove together with the costs of the present proceedings;
g) Ad- interim orders in terms of prayer (a), (b) and (c) hereinabove;
h) Such other of further order or orders be passed as to this Hon'ble Court may deem fit and proper;

This Court, after hearing the parties, on 29.06.2004, has decided the application holding therein that since the auction sale has already been finalized, the application of the company stand decided accordingly.

Feeling aggrieved by the aforesaid order dated 29.06.2004, this Special Appeal has been preferred by the appellant.

It is to mention here that the original application was moved by the Industrial Investment Bank of India Ltd. and another in Company Application no. 16/1996 (Old No.) / 9/2001 (New No.) Industrial Investment Bank of India Ltd. and another vs. M/s A.PR. Wools Pvt. Limited and three others.

We have heard Sri Pankaj Miglani learned counsel for the appellant, Smt. Tehmina Punwani learned Senior counsel assisted by Ms. Menka Tripathi, learned counsel for the respondent No.3 (PICUP) and Sri B.D. Pandey holding brief of

Sri Naresh Pant learned counsel for the respondent No. 4 (PUFC) and perused the record.

Initially the application was moved u/s 40 of the Industrial Reconstruction Bank of India Act 1984. Learned counsel for the respondents have raised objection on the maintainability of the present Special Appeal. They have submitted that there is specific provision for appeal against the decision of the High Court u/s 40 Sub section 12 of The Industrial Reconstruction Bank of India Act 1984.

Section 40 of Sub Section 12 of the Industrial Reconstruction Bank of India Act 1984 reads as under:-

"(12) Any party aggrieved by an order under sub-section (3), sub-section (7) or sub-section (9), within thirty days from the date of the order, prefer an appeal to the court empowered to hear appeals from the decision of the High Court which passed the order and the appellant court may, after hearing the parties, pass such orders as it thinks proper."

Since there is specific provision for appeal against the order passed in company application, which is filed under Section 40 of the Industrial Reconstruction Bank of India Act 1984, hence, the appellant has remedy to file appeal before the competent Court. Therefore, we are of the view that no Special Appeal lies against the order impugned which has been passed in a company application.

Accordingly, the Special Appeal is dismissed. However, the appellant is at liberty to file appeal before the competent Court.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

September 30, 2004:
ASWAL